



Commonwealth of Massachusetts State Ethics Commission

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phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-97-4*

FACTS:

You have been elected to the Board of Selectmen of the Town of Lenox. In your capacity as a private attorney, you would like to post in *The Beacon* newspaper an advertisement offering municipal legal services. The advertisement would include, among your other professional and educational qualifications, that you are “currently a Selectman for the Town of Lenox.”^{1/}

QUESTION:

May you include your current or past public official titles in a description of your experience as part of a newspaper advertisement offering municipal legal services as a private attorney?

ANSWER:

Yes.

DISCUSSION:

As a member of the Board of Selectmen, you are a municipal employee^{2/} for purposes of the conflict of interest law. As such, you are subject to §23(b)(2) of G. L. c. 268A and may not “use or attempt to use [your] official position to secure for [yourself] or others unwarranted privileges or exemptions which are of substantial value^{3/} and which are not properly available to similarly situated individuals.”

We have previously concluded that §23(b)(2) does not prohibit a member of the General Court who is also “of counsel” to a law firm from having his firm announce accurately his status as a member of the General Court as long as such an announcement is made on law firm stationery rather than through an official legislative press statement and the announcement does not in any other way use legislative resources. *EC-COI-89-31*. Similarly, in *EC-COI-92-39*, we noted that “it would be appropriate for even an appointed official to include a present or former title as part of biographical information in campaign literature.” *Id.* at n. 3. In that opinion, we concluded that §23(b)(2) prohibits an *appointed* state official from using his official title to endorse a political candidate. There, we reiterated that an appointed public employee’s official title is a public resource which may not be used for private purposes such as endorsing a commercial product or soliciting support for a political candidate from the official’s agency vendors.^{4/} *Id.*

In contrast, an accurate statement in an advertisement of a public official’s title in order to supply biographical information is simply a statement of fact. In view of our advice in *EC-COI-89-31* and *EC-COI-92-39*, we now clarify that §23(b)(2) does not prohibit elected or appointed officials from accurately identifying their current or past official titles in privately-funded advertisements of their services. Such an advertisement does not constitute an official’s use of her official position to secure an *unwarranted* privilege or exemption under §23(b)(2).^{5/}

DATE AUTHORIZED: August 5, 1997

*Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/} The text of the advertisement reads, in pertinent part, “Janet H. Pumphrey, Esq. . . . is available to provide town counsel services to Massachusetts municipalities. A former long-term Assistant City Solicitor and currently a Selectman for the Town of Lenox, she has a wide range of municipal law experience . . . [her] experience in municipal law balanced with her years as an elected official affords her a unique perspective in town counsel services. . . .”

^{2/} As a member of a board of selectmen in a town with a population of fewer than 10,000, you are a special municipal employee. *G. L. c. 268A, §1(n)*. The distinction between a “special municipal employee” and a “municipal employee” does not affect the application of the conflict of interest law to the facts of your request.

^{3/} The Commission defines “substantial value” to be \$50.00 or more. *EC-COI-93-14 and n. 2*.

^{4/} We also noted that an *elected* official may use his title to endorse a political candidate. The elected official’s title “forms an inherent part of his or her political identity because it connotes the important political fact of a successful electoral candidacy and is, in any event, inevitably connected with the elected official’s name in the mind of the voting public.” *Id.*

^{5/} Our opinion is necessarily limited to an analysis of the issues raised under only §23(b)(2) based upon the facts presented. Issues under other sections of G. L. c. 268A may arise whenever a current or former public employee also works in the private sector.